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THE U.S. SUPREME COURT AND THE COLD WAR: FEAR V. SECURITY. THE TIMES OF VINSON COURT AND WARREN COURT

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> *This is a watershed time in the Court's history. You have World War II. You have McCarthyism. You have the Cold War. You have the civil rights struggles. There's tension between national security, national identity, free speech, individual rights. And it falls into the lap of these nine Justices to sort it all out*[1].

The main field of my study concerns the role of the Supreme Court in American legal and political system. My research frequently focuses on the case law, especially on some of the most important cases in the Court's history, and on their influence on the whole of political, economic, and social relations of the country. I personally believe that American federal judges – among whom the most influential are the Justices of the Supreme Court – have gained more power than the Framers of the Constitution agreed to give them. Such situation occurred mostly because of the creation of the power of judicial review by the Supreme Court, which allowed the judiciary to determine the contitutionality of acts created by the other branches of government[2]. It led directly to judicial interpretation of the Constitution and formed

[1] Joan Biskupic, *The Supreme Court, Program Three*, Thirteen/WNET New York, PBS, February 2007.

[2] In 1803 Justices decided a famous landmark case *Marbury v. Madison*. The presiding Chief Justice John Marshall used the case to increase powers of the judiciary. He reasoned

a strong checks-and-balances mechanism on the side of federal judiciary. Beginning from 1803, and especially in the 20th century, one can observe how the Supreme Court reshaped the meaning of many important political, social and cultural issues, which influenced lives of the people of the United States. Especially in the 50s and 60s of the 20th century the Justices became very active in telling their citizens how to behave and what to do. Therefore the aim of this article is to analyze the most important Supreme Court's decisions made during difficult times of the Cold War, especially in the dimension of social fears and expectations. It seems very interesting and challenging to find out whether there was a direct influence of the Cold War problems on the Court's jurisdiction. It is important to notice that the analyzed period covers activity of so-called Vinson Court (1946–1953) and Warren Court (1953–1969), so it does not concern the whole timeline of Cold War events, until the beginning of the 90s of 20th century. Such limitation is necessary to wholly examine first twenty years of the Cold War, because one can observe at this time high tensions in the Court and among the society, as well as different approaches of the Justices to the issues in question. The problem of fear versus security relates directly to the issues confronted by the Justices under the leaderships of Frederick M. Vinson and Earl Warren, yet does not necessarily mean that the next Court (so-called Burger Court, 1969–1986) was not engaged in these issues at all.

Just few years after the end of the World War II, the United States faced the period of conflicts and tensions with the Soviet Union, which was named the Cold War[3]. The competition between the two former allies dominated international relations for over forty years, producing some military conflicts which did not, however, turn into worldwide wars[4]. The mentioned period led also to creation of new intelligence agencies (American CIA v. Russian KGB), as well as major defense alliances (North Atlantic Treaty Organisation v. the Warsaw Pact). The international tensions could not take place without influencing domestic issues, such as social, economic, and cultural relations, especially in the dimension of surveillance and individual rights.

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that the Constitution was the supreme law of the land and had to be followed by every branch of government. He stated that the judiciary had the right to interpret the law which came before it, and, following the supremacy clause, judges had to decide whether that law was consistent with the Constitution. Marshall confirmed that it was "emphatically the duty of the judicial department to say what the law was" – *Marbury v. Madison* 5 U.S. 137 (1803).

[3] The term was first used by President Truman's advisers, Walter Lippmann and Bernard Baruch, in 1947. Fred Halliday, *Cold War* [in:] *The Oxford Companion to the Politics of the World*, ed. Joel Krieger, New York: Oxford University Press, 2001.

[4] The most important conflicts were: the Korean War (1950–1953), the Cuban Missile Crisis (1962), and the Vietnam War (1964–1975). See: Norman Friedman, *Conflict and Strategy in the Cold War*. U.S. Naval Institute Press, 2007.

Ideologically, communism became the fundamental threat to American values of capitalism and democracy. Fears concerning communist threat to national security caused some controversial activities of U.S. politicians, the most famous of whom was Senator Joseph McCarthy. His anticommunist offensive, called sometimes the *Red Image*[5], was basically aimed to fight espionage and subversion against the United States, and led to creation of numerous legal norms and regulations. For the first time since the infamous laws of 1798 (*Alien and Sedition Acts*[6]) the state decided to lawfully put people in jail for their political opinions. In mid-50s of the 20th century Congress had already passed the following laws: criminalizing membership in the Communist Party of the United States (*Communist Control Act*[7]), investigating persons engaged in un-American activities and authorizing concentration camps in 'emergency situations' (*McCarran Internal Security Act*[8]), requiring professionals to sign affidavits swearing that they were not members of the Communist party (*Labor-Management Relations Act*, known as *Taft-Hartley Act*[9]), and requiring non-citizen adult residents to register with the U.S. government (*Alien Registration Act*, known also as *Smith Act*[10]). Existence of such legal provisions meant prosecutions and deportations of many so-called radicals, loyalty oath requirements, and free-wheeling investigations by several congressional committees[11], which theoretically seemed to violate fundamental individual rights and freedoms of the society. However, one cannot unequivocally decide whether such actions were against U.S. constitution, without a legally valid opinion of the court; in American political reality it means the opinion of the Supreme Court. Therefore let us take a look at some major decisions of the U.S. highest judicial tribunal as goes for the constitutionality of the laws in question.

The Cold War period started about 1947, when the Supreme Court was led by Chief Justice Frederick M. Vinson. Vinson had been nominated to the post by President Harry S. Truman a year before, thus confirming close political ties between the two gentlemen[12]. The Supreme Court during his era (1946–1953) was often called

[5] See: Les K. Adler, *The Red Image: American Attitudes toward Communism in the Cold War Era*. New York: Garland Publishing, Inc., 1991.

[6] See: Geoffrey R. Stone, *Civil Liberties in Wartime*, "Supreme Court Historical Society", vol. 28, issue 2, 2003, pp. 217–219.

[7] 50 U.S.C. 841 (1954).

[8] 50 U.S.C. 781 (1950).

[9] 29 U.S.C.A. 141 (1947).

[10] 18 U.S.C. 2385 (1940).

[11] The most notorious of the committees was the House Committee on Un-American Activities (HUAC). See: Kermit L. Hall (ed.), *The Oxford Companion to the Supreme Court of the United States*. New York: Oxford University Press, 2005, pp. 198–199.

[12] He acted as a Secretary of Treasury under President Harry S. Truman (1945–1946). Later, while being the Chief Justice he considered returning to the political post in the presi-

a transition court, because it was placed between the Court under Chief Justice Harlan Fiske Stone, consisting of Justices who were economic liberals dedicated to protecting constitutional liberties, and the Court under Chief Justice Earl Warren, known for its aggressive expansion of individual liberties and civil rights[13]. From the variety of cases decided by the Vinson Court, most often the Justices adjudicated in cases concerning the legality of governmental actions against individuals who claimed that their basic rights and freedoms guaranteed by the Constitution had been violated. A few disputes that seem crucial for the mentioned topic prove that the Court generally upheld actions undertaken by the federal government.

The first case worth analysing is *American Communications Association v. Douds*[14] where the Supreme Court considered constitutionality of the *Taft-Hartley Act*. The Justices, basing on the Commerce Clause rather than national security arguments, stated that Communists could engage in different kinds of subversive actions (such as industrial sabotage or political strikes), and such actions could lead to weakening of national economy. Therefore the congressional Act was made in case of actions aimed to harm U.S. economy and the government's interest in safeguarding the nation from political and economic crisis was more important than violation of rights of individuals. According to Chief Justice Vinson, when a contest between the First Amendment liberties and imperatives of national security occured, national security always had to win[15]. Other famous decision of that time was the opinion in *Dennis v. United States*[16], a case against eleven people accused of conspiracy and infringement of the *Smith Act*. The Act made it unlawful to conspire, to teach and advocate the destruction of the United States government and the Court found the defendants guilty of teaching communist ideology and actively advocacing its ideas. According to the Justices, particularly the communist advocacy was dangerous for the U.S. government and had to be punished, what meant affirming the constitutionality of *Smith Act*. Chief Justice Vinson, despite belief that the Communist movement was too small and weak to overthrow the government, agreed with the majority of Justices, for whom national security was in danger because of the existence of the ideology

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dential administration. See: Linda C. Gugin, James E. St.Clair, *Chief Justice Fred M. Vinson of Kentucky: A Political Biography*, Lexington: University Press of Kentucky, 2002, p. 156–230.

[13] Michal R. Belknap, *The Vinson Court: Justices, Rulings, Legacy*, Supreme Court Handbooks Series, Santa Barbara: ABC-CLIO, 2004, p. 3.

[14] 339 U.S. 382 (1950).

[15] Christopher Tomlins (ed.), *The United States Supreme Court: the Pursuit of Justice*, New York: Houghton Mifflin Company, 2005, p. 270.

[16] 341 U.S. 494 (1951). For more on the case see: William M. Wiecek, *The Legal Foundations of Domestic Anticommunism: the Background of Dennis v. United States*, "The Supreme Court Review", 2002, p. 375–434.

in question. Similar decisions were made in cases *Knauff v. Shaughnessy*[17] and *Bailey v. Richardson*[18] and led to persecutions of people suspected of conspiracy with the hated communist regime. By the end of 1952 one hundred twenty-six communist activists were indicted, of whom ninety-three were convicted.[19] Not all of these convictions were directly affirmed by the Court, nevertheless it was more than visible that the atmosphere within the highest judicial tribunal of the state was very anti-communist.

Perhaps one of the most controversial decisions of that time was Supreme Court's opinion in *Rosenberg v. United States*[20]. Julius and Ethel Rosenberg were accused of spying on the United States by conveying national security information to the Soviet Union, and they were sentenced to death. Trial judge Irving R. Kaufman believed that the defendants had committed a crime worse than murder, and blamed them for the American deaths during the Korean War, as well as for the future deaths in case of the outbreak of global atomic war. Such argumentation was upheld by the Justices of the Supreme Court, however, there was a lot of vagueness in the Court's decision and in the circumstances of the trial. Controversial was the exact nature of the secrets passed to the Soviets, cotroversial was the behaviour of judges and prosecutors during the trial, and controversial was the legal basis for imposing the death penalty (the question whether the judgement was based on the *Atomic Energy Act* or maybe the *Espionage Act*).[21] Never before had capital punishment been imposed on anyone convicted in peacetime of espionage.[22] Whatever the contemporary feelings about the case may be, it is a fact that during the Vinson Court's era several legal disputes took place resulting in strenghtening of the national security by the highest judicial tribunal of the United States.

The above mentioned precedents show Vinson Court's reluctance to rule against U.S. government's actions falling into the category of fighting the *Red Image*. Curiously enough, this reluctance was visible in most of Vinson's decisions. For example in the famous case *Youngstown Sheet & Tube Co. v. Sawyer*[23], when most of the Justices denied presidential seizure of the country's steel mills during the Korean

[17] 338 U.S. 537 (1950).

[18] 341 U.S. 918 (1951).

[19] Stephen J. Whitfield, *The Culture of the Cold War*, Baltimore: Johns Hopkins University Press, 1991, p. 49.

[20] 346 U.S. 273 (1953).

[21] *Public Law 585*, 49th Congress (1946); Ch. 30, title I, par. 3, 40 Stat. 219 (1917). For more on the case and its legacy see: Michael E. Parrish, *Cold War Justice: the Supreme Court and the Rosenbergs*, "American Historical Review", vol. 82, no. 4, 1977, p. 805–842.

[22] Stephen J. Whitfield, *The Culture*…, op.cit., p. 32.

[23] 343 U.S. 579 (1952).

War, the Chief Justice wrote a dissenting opinion in which he backed the President. According to government, a strike in steel companies could have hampered the economic situation of the country, therefore the Chief of State had power to seize the steel mills. Most of the Justices opposed such interpretation of the Constitution, confirming lawmaking powers of the Congress, not the President. Most of them, but not Vinson. As constitutionalist Peter Irons observes "Vinson would not deny Truman *any* powers, making his vote as predictable as the sunrise"[24].

When Frederick M. Vinson died, the Court under the leadership of a new Chief Justice, Earl Warren, changed the attitude, especially towards espionage and subversion cases. Although the Warren Court (1953–1969) did not focus exclusively on the problems of national security threats, it adjudicated in a few important cases that raised the issue in question. Decisions of 1955, 1956 and 1957 revealed the judicial need to protect rights and freedoms of the individuals discriminated by the wrongdoings of the U.S. government. In *Peters v. Hobby*[25] and *Cole v. Young*[26] the Court changed convictions of employees discharged under the 'loyalty-security program' and of communist activists for violation of state sedition laws. Other important cases in that dimension were *Watkins v. United States*[27] and *Yates v. United States*[28]. In *Watkins* the Justices prohibited congressional committees (including HUAC) from asking questions which would be irrelevant to legislation that these committees were considering to become law. *Yates* seems very crucial because for the first time the Supreme Court reversed the convictions of California Communist leaders under the *Smith Act*[29]. Furthermore, it was the first case in which the Justices ruled that a criminal prosecution for advocacy had to be of some future action, not for belief that something in the future was desirable.

In the early 60s of the 20th century the *Red Image* phobia diminished – it meant less governmental actions against individuals threatening national security and less cases brought to the courts by victims of such actions. It did not, however, mean that the Supreme Court had no influence on the civil rights issues. Quite the opposite, the number of decisions concerning individual rights and freedoms proved to prevail over other social and political aspects regulated by the federal judiciary. From its very beginning the Warren Court demonstrated a strong desire to uphold and sustain

[24] Peter Irons, *A People's History of the Supreme Court: the Men and Women Whose Cases and Decisions Have Shaped Our Constitution*, New York: Penguin Books, 2000, p. 367.

[25] 349 U.S. 331 (1955).

[26] 351 U.S. 536 (1956).

[27] 354 U.S. 178 (1957).

[28] 354 U.S. 298 (1957).

[29] Over one hundred fifty people were indicted for violation of the *Smith Act* from 1951 to 1957. See: *The Oxford Companion…*, ed. Kermit L. Hall, op.cit., p. 933–934.

some of the most fundamental individual rights giving them a new constitutional meaning. Thanks to judicial review, confirmed strongly in the opinion to the case *Cooper v. Aaron*[30] the Supreme Court confronted the issues of race, gender and religion, thus expanding the meaning of some civil rights and freedoms (i.e. freedom of conscience, equal justice under law or basic rights of the accused in criminal proceedings). Furthermore, judicial review became the strongest argument in Court's opinions protecting individual liberties from government's oppression: i.e. when Governor Orville Faubus of Arkansas challenged the Court's authority to bind the states to its interpretation of the Constitution, Justices produced the mentioned *Cooper* decision affirming Court's role as the final arbiter of what the Constitution means.[31] However, it was not the *Cooper* precedent for which Warren Court was to be remembered.

The milestone case which helped to establish legal equality among races in American society was of course the famous *Brown v. Board of Education*[32]. Since the decision in *Plessy v. Ferguson* black children could not attend schools for white children due to regulations forming segregation in public facilities. In the late 40s and early 50s of the 20th century the National Association for the Advancement of Coloured People (NAACP) developed five segregation cases, one of which was *Brown*[33]. The cases in question showed sharp divisions between the Justices of the Court, and it was Chief Justice's role to convince all members of the Court to achieve a proper and unanimous verdict. He was aware of that fact admitting that "he could not escape the feeling that no matter how much the Court wanted to avoid the issue, it had to face it. The Court had finally arrived at the place where it had to determine whether segregation was allowable in public schools."[34] In 1954, speaking for an unanimous Court, Warren stated that any kind of separation led to unequality which was forbidden by U.S. Constitution. He proved that segregation process impaired the motivation of African-American children to learn and that separate educational facilities were inherently unequal. Justices abolished the unfamous *separate but equal* rule created 58 years earlier in the *Plessy* precedent, because it meant unequality for minorities, especially in the context of public education. As a result, particular states had to resign from enacting laws that promoted any kind of racial separation and

[30] 358 U.S. 1 (1958).

[31] *The Oxford Companion…*, ed. Kermit L. Hall, p. 1070.

[32] 347 U.S. 483 (1954).

[33] *The United States Supreme Court…*, (ed.) Christopher Tomlins, op.cit., p. 278–279.

[34] From Warren's *Brown* conference. See: Bernard Schwartz, *The History of the Supreme Court*, New York: Oxford University Press, 1993, p. 291–295. For more on Warren and *Brown* see: Michal R. Belknap, *The Supreme Court under Earl Warren, 1953–1969*, Columbia: University of South Carolina Press, 2005.

segregation, what proved a very complicated process. For example, to ensure that the Court's decision would come into effect, President Dwight Eisenhower (not fully convinced about that) ordered federal troops to Little Rock, Arkansas so that black children could enter the school. On that day, the President addressed the nation and explained that his duty to uphold the ruling of the Supreme Court was "inescapable"[35]. On one hand, it shows high respect and esteem of other branches of government towards the Court's rulings and on the other it proves social reluctance to follow it's decisions; reluctance which did not last long. It is important to mention that the *Brown* decision not only banned school segregation but also became a foundation for several decisions abolishing the segregation in other public places, such as transportation, recreational, official and eating facilities. *Brown* precedent had been awaited for a long time by the majority of Americans (especially Afro-Americans), however, the only political body that was able to change the doctrine of unequality was the Supreme Court. Looking at this point of view one may confirm rightness of the words of Associate Justice Robert H. Jackson who once stated, that the Supreme Court's decisons were not final because they were infallible, but they were infallible because they were final[36].

After the *Brown* case the Warren Court confronted other important aspects of individual rights in public schools. At the beginning of the 60s freedom of religion in schools became a major issue and the Court decided to confront it. In *Engel v. Vitale*[37] the Justices were asked a question whether reading of a non-denominational prayer in school violated the establishment clause of the First Amendment to the Constitution. In a 6–1 opinion the Court admitted that introduction of any kind of prayer in schools was unconstitutional, because it established a state-approved religion. Similarly a year later in *Abington School District v. Schempp*[38] the Justices removed Bible verse recitation from public schools. According to Pennsylvania law, public school students were required to attend classes where they had to read some parts of the Bible. The Supreme Court ruled that such law was unconstitutional because it violated the First and Fourteenth Amendments to the Constitution by forcing young people to participate in religious ceremonies. Both decisions show that the aim of the federal judiciary was to stop any kinds of state-based control over religious issues, and this direction was followed by next generations of Justices.

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[35] Chester J. Pach, Elmo Richardson, *The Presidency of Dwight D. Eisenhower*, Lawrence: University Press of Kansas, 1991, p. 153.

[36] *Brown v. Allen* 344 U.S. 443 (1953).

[37] 370 U.S. 421 (1962).

[38] 374 U.S. 203 (1963).

Apart from the freedom of religion cases the Supreme Court confronted two other important Bill of Rights issues: freedom of speech and right to privacy. As for the first issue, one case seems to be a milestone, that is *New York Times v. Sullivan*[39]. It was a libel case against the newspaper which published an official criticism of local municipal police. In 1964 the Supreme Court held that the First Amendment protected the publication of all critical statements, even false ones, about the conduct of public officials except when the statements were made with knowledge that they were false or in reckless disregard of their truth or falsity. The Court thus provided new legal support for the right of citizens to criticize their public officials without fear of retaliatory libel actions. Time showed that Justices embarked upon a new era in the analysis of First Amendment issues[40]. A new era was also visible in the area of the privacy rights – problem which had been seldom raised by the Court before. However, the decision in *Griswold v. Connecticut*[41] showed tendency of the Warren Court (developed later by the Burger Court) to enter the most personal and private sphere of the individuals. In *Griswold* the Justices confronted the question on the ability of counselling married couples in the use of contraceptives. In one of its most controversial decisions, the Supreme Court acknowledged the right to privacy in marital relations which derived from the Constitution. Although there was no such phrase as 'right to privacy' written in the document, the Justices interpreted it from the First, Third, Fourth and Ninth Amendments together.

The greatest number of cases decided by the Warren Court concerning individual rights and liberties did not relate to the First Amendment's issues, but to disputes over the rights of the accused in criminal procedure. Since 1961 to 1968 the Justices had adjudicated in several cases questioning the role of penal prosecution agencies (state police, federal agents, the prosecutors and attorneys), expanding the rights of suspects and the accused. These so-called procedural due process cases[42] dominated the second part of Earl Warren's leadership in the Court and set rules, some of which have become controversial and disputable. By protecting the rights of individuals in

[39] 376 U.S. 254 (1964).

[40] See: William Hachten, *Supreme Court on the Freedom of the Press: Decisions and Dissents*, Iowa: Iowa State University Press, 1968, p. 307. Edward V. Heck, Albert C. Ringelstein, *The Burger Court and the Primacy of Political Expression*, "Western Political Quarterly", vol. 40, no. 3, 1987, p. 413–425.

[41] 381 U.S. 479 (1965).

[42] Due process of law is an important clause of U.S. Constitution and one may find it twice in the document: in the Fifth and Fourteenth Amendment. Thanks to judicial interpretation there are two kinds of due process: procedural (assuring the fair justice system) and substantive (assuring proper legislation by the state). See: John E. Nowak, Ronald D. Rotunda, *Constitutional Law*, St. Paul: West Group, 2000, p. 398–501, 544–631.

the courts the Supreme Court gave a sign that it would not approve of any formal errors made by the police or prosecution. These judgements marked a new era in the Court's doctrinal decisionmaking which is often called "due process model era"[43].

The most debatable decisions of that time were *Mapp v. Ohio*[44] and *Miranda v. Arizona*[45]. In the first one the Supreme Court confronted the issue of admissibility of evidence in the criminal trial. Dolree Mapp was convicted of possessing illegal obscene magazines which were found during police search; the search, however, was intended to find a fugitive, not the materials mentioned. The Justices, interpreting the Fourth Amendment to the Constitution, created *exclusionary rule* (or the *rule of the fruit of the poisonous tree*) which meant inadmissibility of illegaly obtained evidence in criminal cases. Evidence obtained without a legally approved search warrant had to be excluded from the court, thus weakening the prosecution's case and allowing the accused to enjoy broad protection from the American system of justice. Similar effect brought the Court's decision in *Miranda v. Arizona* when the Justices had to decide upon constitutionality of actions of the policemen who did not read the arrested person his rights. In a narrow judgement the Supreme Court admitted the arrested and the accused constitutional safeguards such as the right to counsel or right to remain silent, which had to be officialy presented to them by the police. So-called Miranda warnings changed the process of arresting suspects and forced the police to act very formally and delicatly with individuals, who could now enjoy the safeguards mentioned from the moment of arrest until the end of the trial.

Other decisions in criminal justice cases made by the Warren Court had rather been expected by the American society for a long time. It is worth to mention especially two precedents: *Gideon v. Wainwright*[46] and *Duncan v. Louisiana*[47] because they confirmed the right of the defendant to have assistance of counsel in every stage of criminal trial and right to a trial by jury, meaning an impartial body of laymen deciding upon guilt or innocence. The Court's interpretation of the Sixth Amendment to the Constitution allowed the accused to have legal help from state-appointed counsel (in case of unability of appointing their own attorney) and to enjoy a jury trial which became one of the most fundamental safeguards from possible partisanship and bias of the trial judge. Other decisions worth mentioning, in which the Warren Court gave a new meaning to the criminal defendants' rights, were *Katz v. United States*[48] ("the

[43] Tadeusz Tomaszewski, *Proces amerykański. Problematyka śledcza*, Wydawnictwo COMER, 1996.

[44] 367 U.S. 643 (1961).

[45] 384 U.S. 436 (1966).

[46] 372 U.S. 335 (1963).

[47] 391 U.S. 145 (1968).

[48] 389 U.S. 347 (1967).

Fourth Amendment protects people not places", telephone tapping case) and *Terry v. Ohio*[49] (probable cause, limitations to *exclusionary rule*). It proves Warren Court's desire to follow the doctrinal due process model and protect individuals from the oppression of the state. Security? Yes. But rather inner than outer.

New era of civil rights' protection meant that the Supreme Court acknowledged a social need for such protection. According to Bernard Schwartz this era marked one of the two great creative periods in American public law.[50] Regardless of outer fears and national security threats, the Justices realized that people must feel secure within the borders of their country, and expecially secure from arbitrary and unlawful actions of the government. Some of the decisions seemed obvious and were awaited by the majority of American society (*Brown v. Board of Education*, *Gideon v. Wainwright*, *Duncan v. Lousiana*), others, however, became more controversial and triggered a nationwide discussion about their legitimacy and fairness (*Miranda v. Arizona*, *Mapp v. Ohio*, *Griswold v. Connecticut*). The question arose whether the accused in criminal procedure did not enjoy too broad protection under the Constitution (interpreted by the Supreme Court), what could lead in effect to disturbances in the feeling of security of the rest of the community. Others raised the problem of constitutional meanings and roots of the right to privacy which had been defined by the Supreme Court so broadly for the first time in history. No matter what contemporary attitude towards these ruling would be, it is worth mentioning that the Supreme Court transformed during the first twenty years of the Cold War, from an institution that was dominated by the national security concerns, to an institution that became concerned about fundamental values of the society, such as civil rights and liberties. This transformation was initiated by the change of the Supreme Court's leadership in 1953, but its origins may be found even in the late 40s of the 20th century. As Justice Felix Frankfurter stated in *Adamson v. California*[51] (decision upholding a statute that allowed for the prosecution to call to the jury's attention the defendant's refusal of testimony): "no state could deprive its citizens of the privileges and protections of the Bill of Rights, regardless of community or national values[52]." However, as time showed, the next six years were dominated by political and social fear of Communism destroying basic American national values. In this dimension, the influence of the Cold War on judicial rulings was more than obvious.

[49] 392 U.S. 1 (1968).

[50] The other was the Marshall Court era (1803–1835). See: Bernard Schwartz, *The History…*, p. 263.

[51] 332 U.S. 46 (1947).

[52] Ibidem.

Cass R. Sustein notices that "when national security conflicts with individual liberty, reviewing courts might adopt one of three general orientations: national security maximalism, liberty maximalism, and minimalism"[53]. In his opinion the most appealing approach is minimalism, which may be observed in the Supreme Court's decisions made during the Cold War period. Sustein explains this approach as a necessity of the courts to give narrow, incompletely theorized rulings, upholding on one hand presidential actions (but only these which have clear congressional authorization) and on the other judging in favor of individuals who have been deprived of their procedural rights and freedoms. Analyzing the Supreme Court's docket since 1947 to 1969, it is important to add that minimalistic the approach is closer to security maximalism during the times of the Vinson Court and closer to liberty maximalism during the times of the Warren Court.

One should not consider the Vinson Court as an institution which did not defend the rights of the individuals – decisions in *Sweatt v. Painter*[54] and *McLaurin v. Oklahoma State of Regents*[55] showed positive attitude of the Justices towards destroying the racial barriers and limitations in public facilities. But it was the Warren Court which broke up with the *separation but equal* doctrine and this court will be remembered for numeorus decisions concerning civil rights issues. One may observe that the tensions of the first years of the Cold War did not allow the Vinson Court to deal with cases different than the national security issues. However, no one forced the Justices to sustain most of the controversial political decisions of that time, for what the Vinson Court shall be remembered. Some say Frederick M. Vinson was the worst Chief Justice in history[56], but one should admit that the years during which he was to hold his post were extraordinary and strange. The *Red Image* dominated political and social life of the country thus influencing the Supreme Court's docket. When the tensions diminished the Court could get down to shaping new meaning of civil rights and civil liberties. And it was Earl Warren's vision of preserving national values and providing for inner security; vision which was admired by other Justices.[57]

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[53] Cass R. Sustein, *Minimalism at War*. "Supreme Court Review" (forthcoming), http://ssrn.com/abstract=629285 (01.06.2007).

[54] 339 U.S. 629 (1950).

[55] 339 U.S. 637 (1950).

[56] Peter Irons, *A People's History of the Supreme Court…*, p. 367; Bernard Schwartz, *The History…*, p. 253.

[57] Justice William Douglas ranks Earl Warren with John Marshall and Charles Evans Hughes „as three greatest Chief Justices". See: William O. Douglas, *The Cort Years 1939–1975*, New York: Random House, 1974, p. 240.

What seems interesting, both Chief Justices proved to have different legal and social attitude and leadership skills, despite being chosen for their posts for similar reasons: friendship and gratitude.[58] In case of Earl Warren positive relations with the President did not last long and even changed into hostility – Eisenhower stated several times, that nomination of Warren was his biggest political mistake. The major reason of that was Chief Justice's willingness to improve the laws governing racial inequality, especially the segregation issues (a situation which the President had to get used to, despite his reluctance).

There is no doubt that the Cold War period created a conflict between the protection of civil rights and liberties and the need to protect national security[59]. The problem of fear versus security existed in both terms in question, but in my opinion the concept of fear in the late 40s was directly related to ideological threats of Communism, and it transformed in the late 50s and early 60s into the concept of fear from limitations set by the government to the rights of individuals. The events which took place at the very beginning of the Cold War justified the Court's rulings against civil rights, but such justification could not last long. I think that crucial decision in *Brown v. Board of Education* marked a new era of adjudication in the name of American society fighting to secure its rights and freedoms. One may observe at the same time indirect effect of the *Brown* decision on national security – by setting racial equality the government achieved international approval necessary during the tense period. As Mary L. Dudziak noticed, the best way to fight the Cold War was the implementation of civil rights reforms.[60] As a result, the Justices confirmed that the inscription *Equal Justice under Law*, which is situated above the entrance to the Supreme Court's building, should become the main motto of the nation's system of justice, as well as a guarantee that there will be less fear and more security. The question occurs, whether right now, in the 21st century, the Supreme Court will not

[58] Dwight Eisenhower selected Earl Warren for the Office, in part because of the debt owed for Warren's crucial support of Eisenhower's cause in the 1952 Republican Convention. As Governor of California and leader of that state's delegation, Warren had provided needed votes on a preliminary issue concerning contested state delegates. See: Lawrence Baum, *The Supreme Court*, D.C.: Congressional Quarterly Inc., 1985, p. 42. For reasons of Vinson's appointment see footnote 12.

[59] The same problem is confronted right now by the American society when some of the provisions of U.S.A. Patriot Act seem to violate the Constitution. See: Andrzej Mania, Pawel Laidler, *Controversy over the U.S.A. Patriot Act*, "The Polish Quarterly of International Affairs", vol. 13, no. 3, 2004, p. 52–64.

[60] Mary L. Dudziak, *Cold War Civil Rights. Race and the Image of American Democracy*, Princeton: Princeton University Press, 2000, p. 79–114.

follow the Vinson's Court's approach while deciding cases that concern a new threat to American values and freedoms: the terrorism? For sure many things done in the Cold War era in security's name would not have been tolerated in different times. What times do we have now? One should wait and observe decisions of the contemporary Supreme Court to find the exact answer.

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